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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted] (LIN-01-187-54862)

Office: Nebraska Service Center

17 SEP 2002
Date:

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

While the record contains some inconsistencies in this regard, the petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The petitioner checked that classification on the petition and counsel references "extraordinary ability" and "Employment-Based Preference Category: EB-1" in his initial brief. Moreover, on appeal, counsel asserts that the petitioner meets the regulatory criteria set forth at 8 C.F.R. 204.5(h), the regulation relating to aliens of extraordinary ability. It is noted, however, that initially, in response to the director's request for additional documentation, and even on appeal, counsel makes numerous references to the "national interest waiver." These waivers are only relevant to advanced degree professionals and aliens with exceptional ability pursuant to section 203(b)(2) of the Act and 8 C.F.R. 204.5(k). A petitioner cannot seek adjudication of the petition under more than one classification. Given the inconsistencies in the record and counsel's failure to resolve these inconsistencies, we conclude that the director did not err in adjudicating the petition based on the classification checked on the petition itself, signed under penalty of perjury.

The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if

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(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term 'extraordinary ability' means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien

has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a tennis instructor. An alien who seeks to enter the United States as a coach under the extraordinary ability classification cannot rely solely on acclaim as an athlete. That said, given the nexus between competing and coaching, in a case where an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability.

The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, he claims, meets the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted diplomas evidencing that he won third place in boys doubles at the Individual Regional Championships in the 14 years old and under category in 1982, second place in the District Tennis Championships sponsored by the District Tennis Association - Tarnobrzeg in 1983, third place at the 10th Polish National Youth Championship in 1983, second place in the junior tennis championships sponsored by the Voivodship Sports Federation in Przemyśl in 1985, second place in boys tennis doubles at the 13th Polish National Youth Championships in 1986, first place in the tennis championships of students and employees of the Physical Education University of Warsaw in 1989, and third place in the boys doubles at the Individual Regional Championships in the 14 years old and under category in 1992. The petitioner only submitted the original Polish document for some of the above awards.

The director concluded that the petitioner's awards were "institutional in their nature and scope," and could "not qualify as nationally or internationally recognized prizes or awards." On appeal, counsel disputes this characterization of the petitioner's awards, but does not explain their significance. Counsel further asserts that a petitioner need not demonstrate awards "outside his country."

The director did not state that the petitioner needed to demonstrate international awards. While some of the petitioner's awards do not appear limited to a single school, many of them are district or regional awards, which cannot be considered nationally recognized awards. The remaining awards appear to be limited to a specific age category; thus, the petitioner did not compete with the

best tennis players in Poland for those awards. Finally, the most recent award was in 1992, and was open only to the petitioner's fellow students. As such, the petitioner's awards cannot demonstrate sustained acclaim as of the date of filing, eight years later. Finally, there is no evidence that any of the petitioner's students won national awards while under his exclusive or primary tutelage.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The Professional Tennis Registry certified the petitioner as an instructor in 1997. The director concluded that this designation was not evidence that the petitioner was one of the few who had risen to the top of the approximately 10,000 instructors who are similarly certified. On appeal, counsel merely states that the certificate reflects that the petitioner "has completed all tests and examinations that are required to be a member of the registry." In order for membership in an association to satisfy the criterion at 8 C.F.R. 204.5(h)(3)(ii), the requirements for membership cannot simply be based on test scores as these requirements do not constitute outstanding achievements. Similarly, the overall prestige of a given association cannot satisfy the criterion, because the key issue is membership requirements rather than the association's overall reputation. The record does not contain the requirements for certification by the Professional Tennis Registry. As such, the petitioner cannot establish that the Registry requires outstanding achievements of those they register, assuming such registration is akin to membership as required by the regulation.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

In response to the director's request for additional documentation, the petitioner submitted a letter from Rafal Jurak, host of an unidentified radio show and representative of Radio Network Chicago and New York, part of POLNET Communications, Ltd., indicating that the petitioner hosted five tennis programs broadcast on radio, including a question and answer portion with listeners. Mr. Jurak indicates that these programs were part of a "related cycle of interviews . . . with well-known Polish athletes in the United States, and [the petitioner] represented the tennis industry."

The director accepted that radio appearances are comparable to published material but questioned whether the network on which the petitioner hosted his programs constitutes "major media." The director further noted that the petitioner's selection based on his notoriety as a Polish athlete was not evidence that his acclaim extended "across the wider field and encompassing all amateur and professional tennis instructors."

On appeal, counsel simply states that the petitioner's appearances meet this criterion. The petitioner fails to provide any evidence that the programs he hosted constitute major media. For example, the petitioner has not established that they were broadcast beyond Chicago and New York. It is not clear whether they were broadcast in Polish or English. Regardless, we concur with the director that the petitioner has not demonstrated that these programs reflect the petitioner's

national acclaim across the United States, where he now resides and works, beyond the Polish community.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

While the petitioner does not claim to meet this criterion, we will address the evidence relating to it. As a tennis instructor, the petitioner has no doubt judged the work of his students. Judging the work of one's students, however, is inherent to the position of tennis instructor and is not evidence of national or international acclaim.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner submitted five reference letters, all professing their support for a national interest waiver for the petitioner. As stated above, national interest waivers are relevant to a lesser classification than the one sought by the petitioner. All of the references have worked with the petitioner at various tennis clubs and provide general praise regarding his instructing abilities. None of the letters explain how the petitioner has contributed to the sport of tennis such that he has acquired national or international acclaim. Nor do they explain how the petitioner meets any of the other regulatory criteria. The above letters are all from the petitioner's immediate colleagues and cannot by themselves establish the petitioner's contributions of major significance to the sport of tennis as a whole. The ten regulatory criteria at 8 C.F.R. 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition.

Finally, counsel makes several general claims on appeal. Counsel asserts that the petitioner's "extensive knowledge and skill in athletics qualifies him for the classification of 'Alien of Extraordinary Ability,'" and "earned him the respect of his peers and colleagues." Counsel continues that the petitioner has used an "extraordinary technique integrating mental, physical, technical and strategic methods during his extensive professional tennis coaching career," and that the petitioner "has attained the praise and admiration from his tennis peer group and has competed against such tennis greats such as Yevgeny Kafelnikov and tennis hall of fame member Ivan Lendl." None of these assertions address the ten regulatory criteria set forth in 8 C.F.R. 204.5(h)(3). Those criteria are provided as a means of allowing objective adjudication rather than relying on the necessarily subjective opinions of an alien's selected references.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a tennis player or instructor to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a tennis player and instructor, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.